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SCHAKOWSKY CONDEMNS BUSH ADMINISTRATION SUPPORT OF PROPOSAL THAT WOULD GRANT CORPORATIONS IMMUNITY AND DENY INFORMATION TO PUBLIC

WASHINGTON, D.C. - During a hearing before the Government Reform Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, U.S. Representative Jan Schakowsky (D-IL) condemned the Bush Administration's support of a proposal that would exempt from the Freedom of Information Act details that corporations would provide to the Department of Homeland Security.□□

□ "It astounds me that in a moment in history when transparency in business is in the headlines every day that we now want to offer a loophole big enough to drive any corporation and its secrets through," said Schakowsky, who is the top Democrat on the Subcommittee.□

□ Below is Schakowsky's full statement from today's subcommittee hearing.

**STATEMENT OF THE HONORABLE JAN SCHAKOWSKY
AT THE HEARING ON
CRITICAL INFRASTRUCTURE PROTECTION**

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Thank you Mr. Chairman.□ It is unfortunate that we are having this hearing today.□ The issue before us is an important one that should be given due consideration by Congress.□ Instead, the majority has insisted on circumventing regular order and is trying to move language on this issue as a part of the homeland security bill B language that would probably not become law if considered separately and openly, and language that is designed not to improve public safety, but to curry favor with the business community.

There is an attempt on the part of some, to exclude from the Freedom of Information Act, all information submitted voluntarily by businesses in the name of critical infrastructure protection.□ One of our witnesses today testified before the Senate that the government has the ability, under the Freedom of Information Act, and under almost 30 years of case law, to protect information submitted voluntarily to the government by businesses.□ He

goes on to say that "if the private sector doesn't think the law is clear, then by definition, it isn't clear." I am puzzled by that logic. I always thought it was the role of the courts, not the private sector, to clarify the interpretation of the law. By this gentleman's logic, any law that businesses disagree with, they only have to claim it is unclear, and it becomes incumbent upon the Congress to change that law. I wonder if that logic extends to individuals.

Mr. Chairman, I want to draw on the testimony David Sobel will be submitting for the record, and ask unanimous consent that his testimony be included in the record. I also ask that the letter from Jim Dempsey at the Electronic Privacy Information Center be included in the record.

The fourth exemption to the Freedom of Information Act protects information, which is a trade secret, or information, which is commercial and privileged or confidential. This information is considered confidential if disclosure of the information is likely to impair the government's ability to obtain the necessary information in the future, or to cause substantial harm to the competitive position of the business from which the information was obtained.

Let me restate this because it is exactly the point that has been ignored by those seeking this exemption. The Freedom of Information Act protects information submitted by businesses if that information is confidential. That information is confidential if the release of that information would make it more difficult to obtain that information in the future.

The language of the Freedom of Information Act is quite clear. It doesn't end there. There are even more protections for confidential business information. In 1987, President Reagan issued Executive Order 12600, which provides notice to a business if the agency determines material submitted by that business and identified as confidential should be released. The business has an opportunity to make its case before the agency, and before a court of law.

Furthermore, no proponent of this exclusion from the Freedom of Information Act has cited a single example where a federal agency has disclosed voluntarily submitted data against the express wishes of the industry, which submitted the information.

On the other hand, the damage this exclusion could do is legion. The language included in the Homeland Security Bill would allow businesses and agency officials to hide lobbying activities under this exclusion. Officials from energy companies could meet with federal officials to craft government energy policy, and all of those conversations could be hidden from public view.

This language would shield these companies from antitrust law -- even the Attorney General objects to that provision.

Mr. Chairman, we all agree that the government has substantial work to do to assure the

protection of our critical infrastructure. I hope that today's hearing will move us down that path. Unfortunately, the language included in the Homeland Security bill does little to improve the security of our critical infrastructure, but instead is about hiding information from the public.